IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1102 OF 2005
IN
SUIT NO.2124 OF 1987

Umakant Dattatraya Khandke and another)..Plaintiffs

Versus

Jankibai Dattatraya Khandke)..Defendant

Mr.Subhash Jadhav i/b.Khaitan & Jaykar for the Plaintiffs.

Ms.Monica Sakhrani for the Defendant.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 5TH DECEMBER 2005

P.C.:

. This Chamber Summons has been taken out for permission to lead secondary evidence of the documents mentioned in the Schedule. These documents are Exhibit "A" and Exhibit "B" to the Plaint. Exhibit "A" is the Articles of Agreement made on 9th April 1945 between Dattatraya Narhari Khandke, Jankibai his wife, Narhari Khandke, Umakant Dattatraya Khandke and Madhav Khandke his sons. Exhibit "B" is the Indenture between the same parties dated 9th April 1945.

2. According to the Plaintiffs, these documents, copies of which are annexed at Exhibits "A" and "B" to

the Plaint, are not in their possession but are in the Defendant's custody. The Defendant has been called upon to produce those documents. The Defendant has not complied with the same and hence it is necessary, the Plaintiffs claim, for them to lead secondary evidence.

3. This Chamber Summons is opposed by the learned Advocate for the Defendant by contending that the documents on which the Plaintiffs are relying are in possession of the Plaintiffs and ought to be produced by the Plaintiffs. She also submits that this is a frivolous litigation filed by the Plaintiffs and the Chamber Summons is an attempt to delay the proceedings.

4. In my view, allowing the Plaintiffs to lead secondary evidence of the documents mentioned in the Schedule will not in any way prejudice the parties. However, what will be the evidentiary value of such evidence is a matter which will be decided by the Court while assessing the evidence.

5. In view of this, Chamber Summons is allowed in terms of prayer clause (a).

6. Chamber Summons disposed of accordingly.